



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1480

Introduced 2/20/2015, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

20 ILCS 3855/1-75

Amends the Illinois Power Agency Act. Provides that the Illinois Power Agency and Illinois Commerce Commission shall include sourcing agreements covering power produced by clean coal and other facilities. Provides that utilities and alternative retail electric supplies shall into sourcing agreements as part of the annual power procurement process. Provides that the Agency and Commission shall establish competitive bidding procedures for sourcing terms. Sets the requirements of the sourcing agreements. Makes technical changes. Effective immediately.

LRB099 07369 MLM 27483 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Power Agency Act is amended by
5 changing Section 1-75 as follows:

6 (20 ILCS 3855/1-75)

7 Sec. 1-75. Planning and Procurement Bureau. The Planning
8 and Procurement Bureau has the following duties and
9 responsibilities:

10 (a) The Planning and Procurement Bureau shall each year,
11 beginning in 2008, develop procurement plans and conduct
12 competitive procurement processes in accordance with the
13 requirements of Section 16-111.5 of the Public Utilities Act
14 for the eligible retail customers of electric utilities that on
15 December 31, 2005 provided electric service to at least 100,000
16 customers in Illinois. The Planning and Procurement Bureau
17 shall also develop procurement plans and conduct competitive
18 procurement processes in accordance with the requirements of
19 Section 16-111.5 of the Public Utilities Act for the eligible
20 retail customers of small multi-jurisdictional electric
21 utilities that (i) on December 31, 2005 served less than
22 100,000 customers in Illinois and (ii) request a procurement
23 plan for their Illinois jurisdictional load. This Section shall

1 not apply to a small multi-jurisdictional utility until such
2 time as a small multi-jurisdictional utility requests the
3 Agency to prepare a procurement plan for their Illinois
4 jurisdictional load. For the purposes of this Section, the term
5 "eligible retail customers" has the same definition as found in
6 Section 16-111.5(a) of the Public Utilities Act.

7 (1) The Agency shall each year, beginning in 2008, as
8 needed, issue a request for qualifications for experts or
9 expert consulting firms to develop the procurement plans in
10 accordance with Section 16-111.5 of the Public Utilities
11 Act. In order to qualify an expert or expert consulting
12 firm must have:

13 (A) direct previous experience assembling
14 large-scale power supply plans or portfolios for
15 end-use customers;

16 (B) an advanced degree in economics, mathematics,
17 engineering, risk management, or a related area of
18 study;

19 (C) 10 years of experience in the electricity
20 sector, including managing supply risk;

21 (D) expertise in wholesale electricity market
22 rules, including those established by the Federal
23 Energy Regulatory Commission and regional transmission
24 organizations;

25 (E) expertise in credit protocols and familiarity
26 with contract protocols;

1 (F) adequate resources to perform and fulfill the
2 required functions and responsibilities; and

3 (G) the absence of a conflict of interest and
4 inappropriate bias for or against potential bidders or
5 the affected electric utilities.

6 (2) The Agency shall each year, as needed, issue a
7 request for qualifications for a procurement administrator
8 to conduct the competitive procurement processes in
9 accordance with Section 16-111.5 of the Public Utilities
10 Act. In order to qualify an expert or expert consulting
11 firm must have:

12 (A) direct previous experience administering a
13 large-scale competitive procurement process;

14 (B) an advanced degree in economics, mathematics,
15 engineering, or a related area of study;

16 (C) 10 years of experience in the electricity
17 sector, including risk management experience;

18 (D) expertise in wholesale electricity market
19 rules, including those established by the Federal
20 Energy Regulatory Commission and regional transmission
21 organizations;

22 (E) expertise in credit and contract protocols;

23 (F) adequate resources to perform and fulfill the
24 required functions and responsibilities; and

25 (G) the absence of a conflict of interest and
26 inappropriate bias for or against potential bidders or

1 the affected electric utilities.

2 (3) The Agency shall provide affected utilities and
3 other interested parties with the lists of qualified
4 experts or expert consulting firms identified through the
5 request for qualifications processes that are under
6 consideration to develop the procurement plans and to serve
7 as the procurement administrator. The Agency shall also
8 provide each qualified expert's or expert consulting
9 firm's response to the request for qualifications. All
10 information provided under this subparagraph shall also be
11 provided to the Commission. The Agency may provide by rule
12 for fees associated with supplying the information to
13 utilities and other interested parties. These parties
14 shall, within 5 business days, notify the Agency in writing
15 if they object to any experts or expert consulting firms on
16 the lists. Objections shall be based on:

17 (A) failure to satisfy qualification criteria;

18 (B) identification of a conflict of interest; or

19 (C) evidence of inappropriate bias for or against
20 potential bidders or the affected utilities.

21 The Agency shall remove experts or expert consulting
22 firms from the lists within 10 days if there is a
23 reasonable basis for an objection and provide the updated
24 lists to the affected utilities and other interested
25 parties. If the Agency fails to remove an expert or expert
26 consulting firm from a list, an objecting party may seek

1 review by the Commission within 5 days thereafter by filing
2 a petition, and the Commission shall render a ruling on the
3 petition within 10 days. There is no right of appeal of the
4 Commission's ruling.

5 (4) The Agency shall issue requests for proposals to
6 the qualified experts or expert consulting firms to develop
7 a procurement plan for the affected utilities and to serve
8 as procurement administrator.

9 (5) The Agency shall select an expert or expert
10 consulting firm to develop procurement plans based on the
11 proposals submitted and shall award contracts of up to 5
12 years to those selected.

13 (6) The Agency shall select an expert or expert
14 consulting firm, with approval of the Commission, to serve
15 as procurement administrator based on the proposals
16 submitted. If the Commission rejects, within 5 days, the
17 Agency's selection, the Agency shall submit another
18 recommendation within 3 days based on the proposals
19 submitted. The Agency shall award a 5-year contract to the
20 expert or expert consulting firm so selected with
21 Commission approval.

22 (b) The experts or expert consulting firms retained by the
23 Agency shall, as appropriate, prepare procurement plans, and
24 conduct a competitive procurement process as prescribed in
25 Section 16-111.5 of the Public Utilities Act, to ensure
26 adequate, reliable, affordable, efficient, and environmentally

1 sustainable electric service at the lowest total cost over
2 time, taking into account any benefits of price stability, for
3 eligible retail customers of electric utilities that on
4 December 31, 2005 provided electric service to at least 100,000
5 customers in the State of Illinois, and for eligible Illinois
6 retail customers of small multi-jurisdictional electric
7 utilities that (i) on December 31, 2005 served less than
8 100,000 customers in Illinois and (ii) request a procurement
9 plan for their Illinois jurisdictional load.

10 (c) Renewable portfolio standard.

11 (1) The procurement plans shall include cost-effective
12 renewable energy resources. A minimum percentage of each
13 utility's total supply to serve the load of eligible retail
14 customers, as defined in Section 16-111.5(a) of the Public
15 Utilities Act, procured for each of the following years
16 shall be generated from cost-effective renewable energy
17 resources: at least 2% by June 1, 2008; at least 4% by June
18 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,
19 2011; at least 7% by June 1, 2012; at least 8% by June 1,
20 2013; at least 9% by June 1, 2014; at least 10% by June 1,
21 2015; and increasing by at least 1.5% each year thereafter
22 to at least 25% by June 1, 2025. To the extent that it is
23 available, at least 75% of the renewable energy resources
24 used to meet these standards shall come from wind
25 generation and, beginning on June 1, 2011, at least the
26 following percentages of the renewable energy resources

1 used to meet these standards shall come from photovoltaics
2 on the following schedule: 0.5% by June 1, 2012, 1.5% by
3 June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and
4 thereafter. Of the renewable energy resources procured
5 pursuant to this Section, at least the following
6 percentages shall come from distributed renewable energy
7 generation devices: 0.5% by June 1, 2013, 0.75% by June 1,
8 2014, and 1% by June 1, 2015 and thereafter. To the extent
9 available, half of the renewable energy resources procured
10 from distributed renewable energy generation shall come
11 from devices of less than 25 kilowatts in nameplate
12 capacity. Renewable energy resources procured from
13 distributed generation devices may also count towards the
14 required percentages for wind and solar photovoltaics.
15 Procurement of renewable energy resources from distributed
16 renewable energy generation devices shall be done on an
17 annual basis through multi-year contracts of no less than 5
18 years, and shall consist solely of renewable energy
19 credits.

20 The Agency shall create credit requirements for
21 suppliers of distributed renewable energy. In order to
22 minimize the administrative burden on contracting
23 entities, the Agency shall solicit the use of third-party
24 organizations to aggregate distributed renewable energy
25 into groups of no less than one megawatt in installed
26 capacity. These third-party organizations shall administer

1 contracts with individual distributed renewable energy
2 generation device owners. An individual distributed
3 renewable energy generation device owner shall have the
4 ability to measure the output of his or her distributed
5 renewable energy generation device.

6 For purposes of this subsection (c), "cost-effective"
7 means that the costs of procuring renewable energy
8 resources do not cause the limit stated in paragraph (2) of
9 this subsection (c) to be exceeded and do not exceed
10 benchmarks based on market prices for renewable energy
11 resources in the region, which shall be developed by the
12 procurement administrator, in consultation with the
13 Commission staff, Agency staff, and the procurement
14 monitor and shall be subject to Commission review and
15 approval.

16 (2) For purposes of this subsection (c), the required
17 procurement of cost-effective renewable energy resources
18 for a particular year shall be measured as a percentage of
19 the actual amount of electricity (megawatt-hours) supplied
20 by the electric utility to eligible retail customers in the
21 planning year ending immediately prior to the procurement.
22 For purposes of this subsection (c), the amount paid per
23 kilowatthour means the total amount paid for electric
24 service expressed on a per kilowatthour basis. For purposes
25 of this subsection (c), the total amount paid for electric
26 service includes without limitation amounts paid for

1 supply, transmission, distribution, surcharges, and add-on
2 taxes.

3 Notwithstanding the requirements of this subsection
4 (c), the total of renewable energy resources procured
5 pursuant to the procurement plan for any single year shall
6 be reduced by an amount necessary to limit the annual
7 estimated average net increase due to the costs of these
8 resources included in the amounts paid by eligible retail
9 customers in connection with electric service to:

10 (A) in 2008, no more than 0.5% of the amount paid
11 per kilowatthour by those customers during the year
12 ending May 31, 2007;

13 (B) in 2009, the greater of an additional 0.5% of
14 the amount paid per kilowatthour by those customers
15 during the year ending May 31, 2008 or 1% of the amount
16 paid per kilowatthour by those customers during the
17 year ending May 31, 2007;

18 (C) in 2010, the greater of an additional 0.5% of
19 the amount paid per kilowatthour by those customers
20 during the year ending May 31, 2009 or 1.5% of the
21 amount paid per kilowatthour by those customers during
22 the year ending May 31, 2007;

23 (D) in 2011, the greater of an additional 0.5% of
24 the amount paid per kilowatthour by those customers
25 during the year ending May 31, 2010 or 2% of the amount
26 paid per kilowatthour by those customers during the

1 year ending May 31, 2007; and

2 (E) thereafter, the amount of renewable energy
3 resources procured pursuant to the procurement plan
4 for any single year shall be reduced by an amount
5 necessary to limit the estimated average net increase
6 due to the cost of these resources included in the
7 amounts paid by eligible retail customers in
8 connection with electric service to no more than the
9 greater of 2.015% of the amount paid per kilowatthour
10 by those customers during the year ending May 31, 2007
11 or the incremental amount per kilowatthour paid for
12 these resources in 2011.

13 No later than June 30, 2011, the Commission shall
14 review the limitation on the amount of renewable energy
15 resources procured pursuant to this subsection (c) and
16 report to the General Assembly its findings as to
17 whether that limitation unduly constrains the
18 procurement of cost-effective renewable energy
19 resources.

20 (3) Through June 1, 2011, renewable energy resources
21 shall be counted for the purpose of meeting the renewable
22 energy standards set forth in paragraph (1) of this
23 subsection (c) only if they are generated from facilities
24 located in the State, provided that cost-effective
25 renewable energy resources are available from those
26 facilities. If those cost-effective resources are not

1 available in Illinois, they shall be procured in states
2 that adjoin Illinois and may be counted towards compliance.
3 If those cost-effective resources are not available in
4 Illinois or in states that adjoin Illinois, they shall be
5 purchased elsewhere and shall be counted towards
6 compliance. After June 1, 2011, cost-effective renewable
7 energy resources located in Illinois and in states that
8 adjoin Illinois may be counted towards compliance with the
9 standards set forth in paragraph (1) of this subsection
10 (c). If those cost-effective resources are not available in
11 Illinois or in states that adjoin Illinois, they shall be
12 purchased elsewhere and shall be counted towards
13 compliance.

14 (4) The electric utility shall retire all renewable
15 energy credits used to comply with the standard.

16 (5) Beginning with the year commencing June 1, 2010, an
17 electric utility subject to this subsection (c) shall apply
18 the lesser of the maximum alternative compliance payment
19 rate or the most recent estimated alternative compliance
20 payment rate for its service territory for the
21 corresponding compliance period, established pursuant to
22 subsection (d) of Section 16-115D of the Public Utilities
23 Act to its retail customers that take service pursuant to
24 the electric utility's hourly pricing tariff or tariffs.
25 The electric utility shall retain all amounts collected as
26 a result of the application of the alternative compliance

1 payment rate or rates to such customers, and, beginning in
2 2011, the utility shall include in the information provided
3 under item (1) of subsection (d) of Section 16-111.5 of the
4 Public Utilities Act the amounts collected under the
5 alternative compliance payment rate or rates for the prior
6 year ending May 31. Notwithstanding any limitation on the
7 procurement of renewable energy resources imposed by item
8 (2) of this subsection (c), the Agency shall increase its
9 spending on the purchase of renewable energy resources to
10 be procured by the electric utility for the next plan year
11 by an amount equal to the amounts collected by the utility
12 under the alternative compliance payment rate or rates in
13 the prior year ending May 31. Beginning April 1, 2012, and
14 each year thereafter, the Agency shall prepare a public
15 report for the General Assembly and Illinois Commerce
16 Commission that shall include, but not necessarily be
17 limited to:

18 (A) a comparison of the costs associated with the
19 Agency's procurement of renewable energy resources to
20 (1) the Agency's costs associated with electricity
21 generated by other types of generation facilities and
22 (2) the benefits associated with the Agency's
23 procurement of renewable energy resources; and

24 (B) an analysis of the rate impacts associated with
25 the Illinois Power Agency's procurement of renewable
26 resources, including, but not limited to, any

1 long-term contracts, on the eligible retail customers
2 of electric utilities.

3 The analysis shall include the Agency's estimate of the
4 total dollar impact that the Agency's procurement of
5 renewable resources has had on the annual electricity bills
6 of the customer classes that comprise each eligible retail
7 customer class taking service from an electric utility. The
8 Agency's report shall also analyze how the operation of the
9 alternative compliance payment mechanism, any long-term
10 contracts, or other aspects of the applicable renewable
11 portfolio standards impacts the rates of customers of
12 alternative retail electric suppliers.

13 (d) Clean coal portfolio standard.

14 (1) The procurement plans shall include electricity
15 generated using clean coal. Each utility shall enter into
16 one or more sourcing agreements with the initial clean coal
17 facility, as provided in paragraph (3) of this subsection
18 (d), covering electricity generated by the initial clean
19 coal facility representing at least 5% of each utility's
20 total supply to serve the load of eligible retail customers
21 in 2015 and each year thereafter, as described in paragraph
22 (3) of this subsection (d), subject to the limits specified
23 in paragraph (2) of this subsection (d). It is the goal of
24 the State that by January 1, 2025, 25% of the electricity
25 used in the State shall be generated by cost-effective
26 clean coal facilities. For purposes of this subsection (d),

1 "cost-effective" means that the expenditures pursuant to
2 such sourcing agreements do not cause the limit stated in
3 paragraph (2) of this subsection (d) to be exceeded and do
4 not exceed cost-based benchmarks, which shall be developed
5 to assess all expenditures pursuant to such sourcing
6 agreements covering electricity generated by clean coal
7 facilities, other than the initial clean coal facility, by
8 the procurement administrator, in consultation with the
9 Commission staff, Agency staff, and the procurement
10 monitor and shall be subject to Commission review and
11 approval.

12 A utility party to a sourcing agreement shall
13 immediately retire any emission credits that it receives in
14 connection with the electricity covered by such agreement.

15 Utilities shall maintain adequate records documenting
16 the purchases under the sourcing agreement to comply with
17 this subsection (d) and shall file an accounting with the
18 load forecast that must be filed with the Agency by July 15
19 of each year, in accordance with subsection (d) of Section
20 16-111.5 of the Public Utilities Act.

21 A utility shall be deemed to have complied with the
22 clean coal portfolio standard specified in this subsection
23 (d) if the utility enters into a sourcing agreement as
24 required by this subsection (d).

25 (2) For purposes of this subsection (d), the required
26 execution of sourcing agreements with the initial clean

1 coal facility for a particular year shall be measured as a
2 percentage of the actual amount of electricity
3 (megawatt-hours) supplied by the electric utility to
4 eligible retail customers in the planning year ending
5 immediately prior to the agreement's execution. For
6 purposes of this subsection (d), the amount paid per
7 kilowatthour means the total amount paid for electric
8 service expressed on a per kilowatthour basis. For purposes
9 of this subsection (d), the total amount paid for electric
10 service includes without limitation amounts paid for
11 supply, transmission, distribution, surcharges and add-on
12 taxes.

13 Notwithstanding the requirements of this subsection
14 (d), the total amount paid under sourcing agreements with
15 clean coal facilities pursuant to the procurement plan for
16 any given year shall be reduced by an amount necessary to
17 limit the annual estimated average net increase due to the
18 costs of these resources included in the amounts paid by
19 eligible retail customers in connection with electric
20 service to:

21 (A) in 2010, no more than 0.5% of the amount paid
22 per kilowatthour by those customers during the year
23 ending May 31, 2009;

24 (B) in 2011, the greater of an additional 0.5% of
25 the amount paid per kilowatthour by those customers
26 during the year ending May 31, 2010 or 1% of the amount

1 paid per kilowatthour by those customers during the
2 year ending May 31, 2009;

3 (C) in 2012, the greater of an additional 0.5% of
4 the amount paid per kilowatthour by those customers
5 during the year ending May 31, 2011 or 1.5% of the
6 amount paid per kilowatthour by those customers during
7 the year ending May 31, 2009;

8 (D) in 2013, the greater of an additional 0.5% of
9 the amount paid per kilowatthour by those customers
10 during the year ending May 31, 2012 or 2% of the amount
11 paid per kilowatthour by those customers during the
12 year ending May 31, 2009; and

13 (E) thereafter, the total amount paid under
14 sourcing agreements with clean coal facilities
15 pursuant to the procurement plan for any single year
16 shall be reduced by an amount necessary to limit the
17 estimated average net increase due to the cost of these
18 resources included in the amounts paid by eligible
19 retail customers in connection with electric service
20 to no more than the greater of (i) 2.015% of the amount
21 paid per kilowatthour by those customers during the
22 year ending May 31, 2009 or (ii) the incremental amount
23 per kilowatthour paid for these resources in 2013.
24 These requirements may be altered only as provided by
25 statute.

26 No later than June 30, 2015, the Commission shall

1 review the limitation on the total amount paid under
2 sourcing agreements, if any, with clean coal facilities
3 pursuant to this subsection (d) and report to the General
4 Assembly its findings as to whether that limitation unduly
5 constrains the amount of electricity generated by
6 cost-effective clean coal facilities that is covered by
7 sourcing agreements.

8 (3) Initial clean coal facility. In order to promote
9 development of clean coal facilities in Illinois, each
10 electric utility subject to this Section shall execute a
11 sourcing agreement to source electricity from a proposed
12 clean coal facility in Illinois (the "initial clean coal
13 facility") that will have a nameplate capacity of at least
14 500 MW when commercial operation commences, that has a
15 final Clean Air Act permit on the effective date of this
16 amendatory Act of the 95th General Assembly, and that will
17 meet the definition of clean coal facility in Section 1-10
18 of this Act when commercial operation commences. The
19 sourcing agreements with this initial clean coal facility
20 shall be subject to both approval of the initial clean coal
21 facility by the General Assembly and satisfaction of the
22 requirements of paragraph (4) of this subsection (d) and
23 shall be executed within 90 days after any such approval by
24 the General Assembly. The Agency and the Commission shall
25 have authority to inspect all books and records associated
26 with the initial clean coal facility during the term of

1 such a sourcing agreement. A utility's sourcing agreement
2 for electricity produced by the initial clean coal facility
3 shall include:

4 (A) a formula contractual price (the "contract
5 price") approved pursuant to paragraph (4) of this
6 subsection (d), which shall:

7 (i) be determined using a cost of service
8 methodology employing either a level or deferred
9 capital recovery component, based on a capital
10 structure consisting of 45% equity and 55% debt,
11 and a return on equity as may be approved by the
12 Federal Energy Regulatory Commission, which in any
13 case may not exceed the lower of 11.5% or the rate
14 of return approved by the General Assembly
15 pursuant to paragraph (4) of this subsection (d);
16 and

17 (ii) provide that all miscellaneous net
18 revenue, including but not limited to net revenue
19 from the sale of emission allowances, if any,
20 substitute natural gas, if any, grants or other
21 support provided by the State of Illinois or the
22 United States Government, firm transmission
23 rights, if any, by-products produced by the
24 facility, energy or capacity derived from the
25 facility and not covered by a sourcing agreement
26 pursuant to paragraph (3) of this subsection (d) or

1 item (5) of subsection (d) of Section 16-115 of the
2 Public Utilities Act, whether generated from the
3 synthesis gas derived from coal, from SNG, or from
4 natural gas, shall be credited against the revenue
5 requirement for this initial clean coal facility;

6 (B) power purchase provisions, which shall:

7 (i) provide that the utility party to such
8 sourcing agreement shall pay the contract price
9 for electricity delivered under such sourcing
10 agreement;

11 (ii) require delivery of electricity to the
12 regional transmission organization market of the
13 utility that is party to such sourcing agreement;

14 (iii) require the utility party to such
15 sourcing agreement to buy from the initial clean
16 coal facility in each hour an amount of energy
17 equal to all clean coal energy made available from
18 the initial clean coal facility during such hour
19 times a fraction, the numerator of which is such
20 utility's retail market sales of electricity
21 (expressed in kilowatthours sold) in the State
22 during the prior calendar month and the
23 denominator of which is the total retail market
24 sales of electricity (expressed in kilowatthours
25 sold) in the State by utilities during such prior
26 month and the sales of electricity (expressed in

1 kilowatthours sold) in the State by alternative
2 retail electric suppliers during such prior month
3 that are subject to the requirements of this
4 subsection (d) and paragraph (5) of subsection (d)
5 of Section 16-115 of the Public Utilities Act,
6 provided that the amount purchased by the utility
7 in any year will be limited by paragraph (2) of
8 this subsection (d); and

9 (iv) be considered pre-existing contracts in
10 such utility's procurement plans for eligible
11 retail customers;

12 (C) contract for differences provisions, which
13 shall:

14 (i) require the utility party to such sourcing
15 agreement to contract with the initial clean coal
16 facility in each hour with respect to an amount of
17 energy equal to all clean coal energy made
18 available from the initial clean coal facility
19 during such hour times a fraction, the numerator of
20 which is such utility's retail market sales of
21 electricity (expressed in kilowatthours sold) in
22 the utility's service territory in the State
23 during the prior calendar month and the
24 denominator of which is the total retail market
25 sales of electricity (expressed in kilowatthours
26 sold) in the State by utilities during such prior

1 month and the sales of electricity (expressed in
2 kilowatthours sold) in the State by alternative
3 retail electric suppliers during such prior month
4 that are subject to the requirements of this
5 subsection (d) and paragraph (5) of subsection (d)
6 of Section 16-115 of the Public Utilities Act,
7 provided that the amount paid by the utility in any
8 year will be limited by paragraph (2) of this
9 subsection (d);

10 (ii) provide that the utility's payment
11 obligation in respect of the quantity of
12 electricity determined pursuant to the preceding
13 clause (i) shall be limited to an amount equal to
14 (1) the difference between the contract price
15 determined pursuant to subparagraph (A) of
16 paragraph (3) of this subsection (d) and the
17 day-ahead price for electricity delivered to the
18 regional transmission organization market of the
19 utility that is party to such sourcing agreement
20 (or any successor delivery point at which such
21 utility's supply obligations are financially
22 settled on an hourly basis) (the "reference
23 price") on the day preceding the day on which the
24 electricity is delivered to the initial clean coal
25 facility busbar, multiplied by (2) the quantity of
26 electricity determined pursuant to the preceding

1 clause (i); and

2 (iii) not require the utility to take physical
3 delivery of the electricity produced by the
4 facility;

5 (D) general provisions, which shall:

6 (i) specify a term of no more than 30 years,
7 commencing on the commercial operation date of the
8 facility;

9 (ii) provide that utilities shall maintain
10 adequate records documenting purchases under the
11 sourcing agreements entered into to comply with
12 this subsection (d) and shall file an accounting
13 with the load forecast that must be filed with the
14 Agency by July 15 of each year, in accordance with
15 subsection (d) of Section 16-111.5 of the Public
16 Utilities Act;

17 (iii) provide that all costs associated with
18 the initial clean coal facility will be
19 periodically reported to the Federal Energy
20 Regulatory Commission and to purchasers in
21 accordance with applicable laws governing
22 cost-based wholesale power contracts;

23 (iv) permit the Illinois Power Agency to
24 assume ownership of the initial clean coal
25 facility, without monetary consideration and
26 otherwise on reasonable terms acceptable to the

1 Agency, if the Agency so requests no less than 3
2 years prior to the end of the stated contract term;

3 (v) require the owner of the initial clean coal
4 facility to provide documentation to the
5 Commission each year, starting in the facility's
6 first year of commercial operation, accurately
7 reporting the quantity of carbon emissions from
8 the facility that have been captured and
9 sequestered and report any quantities of carbon
10 released from the site or sites at which carbon
11 emissions were sequestered in prior years, based
12 on continuous monitoring of such sites. If, in any
13 year after the first year of commercial operation,
14 the owner of the facility fails to demonstrate that
15 the initial clean coal facility captured and
16 sequestered at least 50% of the total carbon
17 emissions that the facility would otherwise emit
18 or that sequestration of emissions from prior
19 years has failed, resulting in the release of
20 carbon dioxide into the atmosphere, the owner of
21 the facility must offset excess emissions. Any
22 such carbon offsets must be permanent, additional,
23 verifiable, real, located within the State of
24 Illinois, and legally and practicably enforceable.
25 The cost of such offsets for the facility that are
26 not recoverable shall not exceed \$15 million in any

1 given year. No costs of any such purchases of
2 carbon offsets may be recovered from a utility or
3 its customers. All carbon offsets purchased for
4 this purpose and any carbon emission credits
5 associated with sequestration of carbon from the
6 facility must be permanently retired. The initial
7 clean coal facility shall not forfeit its
8 designation as a clean coal facility if the
9 facility fails to fully comply with the applicable
10 carbon sequestration requirements in any given
11 year, provided the requisite offsets are
12 purchased. However, the Attorney General, on
13 behalf of the People of the State of Illinois, may
14 specifically enforce the facility's sequestration
15 requirement and the other terms of this contract
16 provision. Compliance with the sequestration
17 requirements and offset purchase requirements
18 specified in paragraph (3) of this subsection (d)
19 shall be reviewed annually by an independent
20 expert retained by the owner of the initial clean
21 coal facility, with the advance written approval
22 of the Attorney General. The Commission may, in the
23 course of the review specified in item (vii),
24 reduce the allowable return on equity for the
25 facility if the facility wilfully fails to comply
26 with the carbon capture and sequestration

1 requirements set forth in this item (v);

2 (vi) include limits on, and accordingly
3 provide for modification of, the amount the
4 utility is required to source under the sourcing
5 agreement consistent with paragraph (2) of this
6 subsection (d);

7 (vii) require Commission review: (1) to
8 determine the justness, reasonableness, and
9 prudence of the inputs to the formula referenced in
10 subparagraphs (A)(i) through (A)(iii) of paragraph
11 (3) of this subsection (d), prior to an adjustment
12 in those inputs including, without limitation, the
13 capital structure and return on equity, fuel
14 costs, and other operations and maintenance costs
15 and (2) to approve the costs to be passed through
16 to customers under the sourcing agreement by which
17 the utility satisfies its statutory obligations.
18 Commission review shall occur no less than every 3
19 years, regardless of whether any adjustments have
20 been proposed, and shall be completed within 9
21 months;

22 (viii) limit the utility's obligation to such
23 amount as the utility is allowed to recover through
24 tariffs filed with the Commission, provided that
25 neither the clean coal facility nor the utility
26 waives any right to assert federal pre-emption or

1 any other argument in response to a purported
2 disallowance of recovery costs;

3 (ix) limit the utility's or alternative retail
4 electric supplier's obligation to incur any
5 liability until such time as the facility is in
6 commercial operation and generating power and
7 energy and such power and energy is being delivered
8 to the facility busbar;

9 (x) provide that the owner or owners of the
10 initial clean coal facility, which is the
11 counterparty to such sourcing agreement, shall
12 have the right from time to time to elect whether
13 the obligations of the utility party thereto shall
14 be governed by the power purchase provisions or the
15 contract for differences provisions;

16 (xi) append documentation showing that the
17 formula rate and contract, insofar as they relate
18 to the power purchase provisions, have been
19 approved by the Federal Energy Regulatory
20 Commission pursuant to Section 205 of the Federal
21 Power Act;

22 (xii) provide that any changes to the terms of
23 the contract, insofar as such changes relate to the
24 power purchase provisions, are subject to review
25 under the public interest standard applied by the
26 Federal Energy Regulatory Commission pursuant to

1 Sections 205 and 206 of the Federal Power Act; and
2 (xiii) conform with customary lender
3 requirements in power purchase agreements used as
4 the basis for financing non-utility generators.

5 (4) Effective date of sourcing agreements with the
6 initial clean coal facility.

7 Any proposed sourcing agreement with the initial clean
8 coal facility shall not become effective unless the
9 following reports are prepared and submitted and
10 authorizations and approvals obtained:

11 (i) Facility cost report. The owner of the initial
12 clean coal facility shall submit to the Commission, the
13 Agency, and the General Assembly a front-end
14 engineering and design study, a facility cost report,
15 method of financing (including but not limited to
16 structure and associated costs), and an operating and
17 maintenance cost quote for the facility (collectively
18 "facility cost report"), which shall be prepared in
19 accordance with the requirements of this paragraph (4)
20 of subsection (d) of this Section, and shall provide
21 the Commission and the Agency access to the work
22 papers, relied upon documents, and any other backup
23 documentation related to the facility cost report.

24 (ii) Commission report. Within 6 months following
25 receipt of the facility cost report, the Commission, in
26 consultation with the Agency, shall submit a report to

1 the General Assembly setting forth its analysis of the
2 facility cost report. Such report shall include, but
3 not be limited to, a comparison of the costs associated
4 with electricity generated by the initial clean coal
5 facility to the costs associated with electricity
6 generated by other types of generation facilities, an
7 analysis of the rate impacts on residential and small
8 business customers over the life of the sourcing
9 agreements, and an analysis of the likelihood that the
10 initial clean coal facility will commence commercial
11 operation by and be delivering power to the facility's
12 busbar by 2016. To assist in the preparation of its
13 report, the Commission, in consultation with the
14 Agency, may hire one or more experts or consultants,
15 the costs of which shall be paid for by the owner of
16 the initial clean coal facility. The Commission and
17 Agency may begin the process of selecting such experts
18 or consultants prior to receipt of the facility cost
19 report.

20 (iii) General Assembly approval. The proposed
21 sourcing agreements shall not take effect unless,
22 based on the facility cost report and the Commission's
23 report, the General Assembly enacts authorizing
24 legislation approving (A) the projected price, stated
25 in cents per kilowatthour, to be charged for
26 electricity generated by the initial clean coal

1 facility, (B) the projected impact on residential and
2 small business customers' bills over the life of the
3 sourcing agreements, and (C) the maximum allowable
4 return on equity for the project; and

5 (iv) Commission review. If the General Assembly
6 enacts authorizing legislation pursuant to
7 subparagraph (iii) approving a sourcing agreement, the
8 Commission shall, within 90 days of such enactment,
9 complete a review of such sourcing agreement. During
10 such time period, the Commission shall implement any
11 directive of the General Assembly, resolve any
12 disputes between the parties to the sourcing agreement
13 concerning the terms of such agreement, approve the
14 form of such agreement, and issue an order finding that
15 the sourcing agreement is prudent and reasonable.

16 The facility cost report shall be prepared as follows:

17 (A) The facility cost report shall be prepared by
18 duly licensed engineering and construction firms
19 detailing the estimated capital costs payable to one or
20 more contractors or suppliers for the engineering,
21 procurement and construction of the components
22 comprising the initial clean coal facility and the
23 estimated costs of operation and maintenance of the
24 facility. The facility cost report shall include:

25 (i) an estimate of the capital cost of the core
26 plant based on one or more front end engineering

1 and design studies for the gasification island and
2 related facilities. The core plant shall include
3 all civil, structural, mechanical, electrical,
4 control, and safety systems.

5 (ii) an estimate of the capital cost of the
6 balance of the plant, including any capital costs
7 associated with sequestration of carbon dioxide
8 emissions and all interconnects and interfaces
9 required to operate the facility, such as
10 transmission of electricity, construction or
11 backfeed power supply, pipelines to transport
12 substitute natural gas or carbon dioxide, potable
13 water supply, natural gas supply, water supply,
14 water discharge, landfill, access roads, and coal
15 delivery.

16 The quoted construction costs shall be expressed
17 in nominal dollars as of the date that the quote is
18 prepared and shall include capitalized financing costs
19 during construction, taxes, insurance, and other
20 owner's costs, and an assumed escalation in materials
21 and labor beyond the date as of which the construction
22 cost quote is expressed.

23 (B) The front end engineering and design study for
24 the gasification island and the cost study for the
25 balance of plant shall include sufficient design work
26 to permit quantification of major categories of

1 materials, commodities and labor hours, and receipt of
2 quotes from vendors of major equipment required to
3 construct and operate the clean coal facility.

4 (C) The facility cost report shall also include an
5 operating and maintenance cost quote that will provide
6 the estimated cost of delivered fuel, personnel,
7 maintenance contracts, chemicals, catalysts,
8 consumables, spares, and other fixed and variable
9 operations and maintenance costs. The delivered fuel
10 cost estimate will be provided by a recognized third
11 party expert or experts in the fuel and transportation
12 industries. The balance of the operating and
13 maintenance cost quote, excluding delivered fuel
14 costs, will be developed based on the inputs provided
15 by duly licensed engineering and construction firms
16 performing the construction cost quote, potential
17 vendors under long-term service agreements and plant
18 operating agreements, or recognized third party plant
19 operator or operators.

20 The operating and maintenance cost quote
21 (including the cost of the front end engineering and
22 design study) shall be expressed in nominal dollars as
23 of the date that the quote is prepared and shall
24 include taxes, insurance, and other owner's costs, and
25 an assumed escalation in materials and labor beyond the
26 date as of which the operating and maintenance cost

1 quote is expressed.

2 (D) The facility cost report shall also include an
3 analysis of the initial clean coal facility's ability
4 to deliver power and energy into the applicable
5 regional transmission organization markets and an
6 analysis of the expected capacity factor for the
7 initial clean coal facility.

8 (E) Amounts paid to third parties unrelated to the
9 owner or owners of the initial clean coal facility to
10 prepare the core plant construction cost quote,
11 including the front end engineering and design study,
12 and the operating and maintenance cost quote will be
13 reimbursed through Coal Development Bonds.

14 (5) Re-powering and retrofitting coal-fired power
15 plants previously owned by Illinois utilities to qualify as
16 clean coal facilities. During the 2009 procurement
17 planning process and thereafter, the Agency and the
18 Commission shall consider sourcing agreements covering
19 electricity generated by power plants that were previously
20 owned by Illinois utilities and that have been or will be
21 converted into clean coal facilities, as defined by Section
22 1-10 of this Act. Pursuant to such procurement planning
23 process, the owners of such facilities may propose to the
24 Agency sourcing agreements with utilities and alternative
25 retail electric suppliers required to comply with
26 subsection (d) of this Section and item (5) of subsection

1 (d) of Section 16-115 of the Public Utilities Act, covering
2 electricity generated by such facilities. In the case of
3 sourcing agreements that are power purchase agreements,
4 the contract price for electricity sales shall be
5 established on a cost of service basis. In the case of
6 sourcing agreements that are contracts for differences,
7 the contract price from which the reference price is
8 subtracted shall be established on a cost of service basis.
9 The Agency and the Commission may approve any such utility
10 sourcing agreements that do not exceed cost-based
11 benchmarks developed by the procurement administrator, in
12 consultation with the Commission staff, Agency staff and
13 the procurement monitor, subject to Commission review and
14 approval. The Commission shall have authority to inspect
15 all books and records associated with these clean coal
16 facilities during the term of any such contract.

17 (5.5) Other clean coal facilities. In order to promote
18 the development of clean coal power generation, and in
19 furtherance of the State's goal of having at least 25% of
20 the State's electricity generated by cost-effective clean
21 coal facilities by January 1, 2025 as provided in paragraph
22 (1) of this subsection (d), the Agency and Commission shall
23 include sourcing agreements covering power produced by (i)
24 clean coal facilities, as defined in Section 1-10 of this
25 Act, and (ii) facilities specified in paragraphs (3) and
26 (5) of this subsection (d), in each annual power

1 procurement plan.

2 The Agency and Commission shall require utilities and
3 alternative retail electric suppliers to enter into such
4 sourcing agreements as part of the annual power procurement
5 process.

6 The Agency and Commission shall establish a
7 competitive procedure to solicit and receive proposed
8 sourcing terms from producers of clean coal power
9 interested in selection for sourcing agreements. The
10 competitive procedure shall include a method of selection
11 for inclusion in those agreements.

12 These sourcing agreements shall be subject to the
13 limits contained in items (A) through (E) of paragraph (2)
14 of this subsection (d), the benchmarks as set forth by
15 paragraph (1) of this subsection (d), and the requirements
16 for sourcing agreements contained in paragraph (3) of this
17 subsection (d). As part of the annual procurement planning
18 process, the owners of clean coal facilities may offer
19 proposals to the Agency sourcing agreements with utilities
20 and alternate retail electric suppliers required to comply
21 with this subsection (d), as well as item (5) of subsection
22 (d) of Section 16-115 of the Public Utilities Act, covering
23 electricity generated by such facilities. In the case of
24 sourcing agreements that are power purchase agreements,
25 the contract price for electricity sales shall be
26 established on a cost-of-service basis. In the case of

1 sourcing agreements that are contracts for differences,
2 the contract price from which the reference price is
3 subtracted shall be established on a cost-of-service
4 basis. The sourcing agreements shall be included under and
5 governed by provisions of the Public Utilities Act.

6 (6) Costs incurred under this subsection (d) or
7 pursuant to a contract entered into under this subsection
8 (d) shall be deemed prudently incurred and reasonable in
9 amount and the electric utility shall be entitled to full
10 cost recovery pursuant to the tariffs filed with the
11 Commission.

12 (e) The draft procurement plans are subject to public
13 comment, as required by Section 16-111.5 of the Public
14 Utilities Act.

15 (f) The Agency shall submit the final procurement plan to
16 the Commission. The Agency shall revise a procurement plan if
17 the Commission determines that it does not meet the standards
18 set forth in Section 16-111.5 of the Public Utilities Act.

19 (g) The Agency shall assess fees to each affected utility
20 to recover the costs incurred in preparation of the annual
21 procurement plan for the utility.

22 (h) The Agency shall assess fees to each bidder to recover
23 the costs incurred in connection with a competitive procurement
24 process.

25 (Source: P.A. 97-325, eff. 8-12-11; 97-616, eff. 10-26-11;
26 97-618, eff. 10-26-11; 97-658, eff. 1-13-12; 97-813, eff.

1 7-13-12; 98-463, eff. 8-16-13.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.